

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

FLORENCIO SENDEJO §
Plaintiff, §
§
§
§ CIVIL ACTION NO. _____
v. §
§
WAL-MART STORES TEXAS LLC § JURY DEMAND
Defendant,

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332 and 1441
(DIVERSITY)**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW WAL-MART STORES TEXAS, LLC, (hereinafter "Defendant") in the above entitled and numbered cause, and files this Notice of Removal of the present cause from the 370th Judicial District of Hidalgo County, Texas, in which it is now pending, to the United States District Court for the Southern District of Texas, McAllen Division, showing the Court in support as follows:

1. This cause was commenced in the County Court at Law No. 8 of Hidalgo County, Texas, on November 5, 2020, when Plaintiff's Original Petition was filed in Cause No. C3868-2-G wherein Plaintiff named Wal-Mart Stores Texas, LLC as the sole Defendant. A copy of Plaintiff's Original Petition is attached hereto as **Exhibit A** and incorporated herein for all purposes.

2. Defendant was served with a copy of Plaintiff's Original Petition on November 10, 2020. A copy of the Citation indicating date of service is attached hereto as **Exhibit B** and incorporated herein for all purposes.

3. Plaintiff filed this civil action against Defendant asserting premises liability claims allegedly arising from a slip-and-fall incident which is claimed to have occurred on or about June

2, 2020, while Plaintiff was a patron at Defendant's premises located in Penitas, Hidalgo County, Texas. *See Exhibit A*, p. 2 at ¶7.

4. Defendant filed a responsive pleading in State Court on December 4, 2020 a copy of which is attached hereto as **Exhibit C** and incorporated herein for all purposes.

5. Plaintiff resides in Hidalgo County in the State of Texas. *See Exhibit A*, p. 1 at ¶3. Plaintiff was at the time of the filing of this lawsuit, and remains, a citizen of the State of Texas.

6. Currently, and at all times relevant to this lawsuit, Defendant is organized and existing under the laws of the State of Arkansas with its principal place of business in the State of Arkansas. Therefore, Defendant is a citizen of Arkansas, and is not a citizen of Texas.

7. Complete diversity of citizenship exists between the adverse parties in the present cause for the purposes of federal removal jurisdiction pursuant to 28 U.S.C. §1441.

8. In Plaintiff's Original Petition, Plaintiff states that he seeks compensatory damages for past and future medical care and expenses, past and future physical pain and suffering, past and future physical impairment, and past and future mental anguish. *See Exhibit A*, p. 3 at ¶9. Furthermore, Plaintiff states in his Original Petition that he is seeking damages within the county court's jurisdictional limit. *Id.* at ¶ 14. Although Plaintiff pled that he is seeking \$75,000 in compensatory damages, Plaintiff did not *limit* his recovery to \$75,000.00. *Id.* Furthermore, Plaintiff, through his counsel, refused to stipulate that Plaintiff would not seek in excess of \$75,000 in total recovery. *See Exhibit D*. Therefore, the amount in controversy herein exceeds \$75,000.00, exclusive of interest and costs.

9. This action is one over which this Court has original jurisdiction under the provisions of Title 28, United States Code §§ 1332 and 1441(a) in that it is a civil action between completely diverse parties and that amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

10. This Notice of Removal is timely filed in accordance with 28 U.S.C. §1446(b), in that it is filed within thirty (30) days of the service of Plaintiff's Original Petition on Defendant and within one year of the initial filing of the lawsuit.

10. Upon filing of this Notice of Removal of this cause, written notice of the filing by Defendant to Plaintiff has been provided as required by law. A copy of this Notice is also being filed with the Clerk of the State Court in which this cause was originally filed.

11. Defendant hereby requests a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant prays for removal of the above entitled and numbered cause from the 370th Judicial District of Hidalgo County, Texas to this Honorable Court.

Respectfully submitted,

COLVIN, SAENZ, RODRIGUEZ & KENNAMER LLP

By: _____


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**ATTORNEYS FOR DEFENDANT
WAL-MART STORES TEXAS, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December 2020 I electronically filed the foregoing with the Clerk of Court for the District Court of Hidalgo County, Texas using the CM/ECF system for the Clerk of Court for the District Court of Hidalgo County, Texas which will send notification of such filing to all counsel of record.



Jaime A. Saenz